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C O N F I D E N T I A L SECTION 01 OF 04 NEW DELHI 008856

SIPDIS

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TAGS: KJUS KDEM PGOV PINR IN

SUBJECT: CONGRESS DREADS IMPENDING SUPREME COURT JUDGMENT,  
SENIOR RESIGNATIONS POSSIBLE

REF: A. NEW DELHI 8844

1B. CALCUTTA 420

Classified By: Political Counselor Geoff Pyatt, for Reasons 1.4 (B, D)

11. (C) Summary: Congress is facing a major political mess of its own making as it waits for a Supreme Court judgment that may rule its actions in Bihar to have been unconstitutional, with potentially dire consequences. When Congress moved precipitously to head off the formation of BJP/NDA governments in Jharkhand and Bihar in February 2005, using the governors to dissolve both governments and prevent the opposition from staking their claims, the UPA in Bihar allegedly ignored a key provision of the Indian Constitution and failed to constitute the state assembly before dissolving the government. The Supreme Court could issue a final judgment in the case as early as November 25, accusing President Kalam, Prime Minister Singh, and the Union Cabinet of acting unconstitutionally in Bihar. Such a judgment would add to growing Congress Party woes (Reftel A). The BJP/NDA would almost certainly call for PM Singh's resignation. Congress has been reluctant to comment publicly, but party contacts say privately that they are taking the issue seriously, and will sack Bihar Governor Buta Singh, but will fight to retain PM Singh. The Left Front(LF) is prepared to join with Congress to defend against an anticipated opposition onslaught, but could demand that the UPA slow the pace of economic liberalization and its pro-American foreign policy as the price for its support. Either way, this mess is an "own goal" of the worst sort, just as Parliament reconvenes and just after a colossal election defeat in, ironically, Bihar. End Summary

A Big Screw Up

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12. (SBU) Bihar continues to prove troublesome for the UPA, which has taken some serious missteps there (Ref B). In the February 2005 election, the then-ruling Rashtriya Janata Party (RJD) of Railway Minister Lalu Prasad Yadav won the largest vote share and largest number of seats, but could not form the government. The UPA Cabinet made a midnight decision and on May 23, President Kalam issued a proclamation dissolving the Bihar Assembly. In what could charitably be called a grievous oversight, no one in the UPA government appeared to realize that under the Indian Constitution, the sitting Assembly's term had officially ended, and Article 174 requires the GOI to convene the newly-elected assembly before addressing the issue of whether any party or group of parties had sufficient strength to form the state government.

Gotcha!

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13. (U) Demonstrating the vibrancy of India's civil society groups, a group of NGO's and civil rights organizations then filed a legal case alleging that Bihar Governor Buta Singh acted unconstitutionally when he submitted the dissolution proposal to New Delhi, and that President Abdul Kalam, Prime Minister Manmohan Singh and the Union Cabinet unconstitutionally approved the measure. Soli Sorabjee, a former Attorney General and lawyer for the plaintiffs, argued that Governor Singh "made no attempt to explore the possibility of forming a government before recommending the dissolution of the house," and that the "indecent haste" exhibited by the Governor demonstrated that "his only intention was to prevent Janata Dal(U) leader Nitish Kumar from staking his claim to form the government, as it did not suit the political ambitions of Lalu Prasad Yadav." Sorabjee maintained that the UPA government never provided an explanation "for the hurry shown in getting the Proclamation signed by the President (who was then in Moscow) at midnight."

"You Screwed UP"

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14. (U) On October 7, the Supreme Court made an interim judgment that the UPA's actions appeared unconstitutional, but said it would not interfere with the Bihar elections then in progress. The SC determined that to stay the election would question the legitimacy of the Election Commission, which had proceeded with polls in Bihar. The SC promised to deliver a final verdict but noted that it would "take some time," as "we have to take into consideration every angle as

it would have far-reaching consequences that would not just be confined to Bihar."

#### Case Could Have Big Ramifications

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**15.** (C) On November 17, Poloff met with Ram Shastri, one of the plaintiffs in the case, who contended that their legal team has been told that the final Supreme Court judgment could be issued as soon as November 25. Shastri could not confirm which UPA officials would be named in the SC judgment, but suggested that it would be some combination of Governor Singh, President Kalam, PM Manmohan Singh, and the entire Union Cabinet. Pointing out that the Supreme Court does not have the legal authority to order the dismissal of public officials, but can only point out their failings and hope that they make the proper response, he predicted two possible scenarios, 1) the SC absolves the President and singles out for blame the PM and his Cabinet, 2) the SC also fingers the President.

#### A Very Sticky Wicket

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**16.** (C) Shastri maintained that under Indian political precedent, PM Singh would be expected to resign and dissolve his Cabinet if they are named in the SC Judgment as approving an unconstitutional action. He predicted that the BJP would immediately call for their resignations, and that Congress would face a serious internal revolt if it attempted to foist the blame on senior Cabinet Ministers such as Defense Minister Pranab Mukherjee or Home Minister Shivraj Patil. Shastri speculated that should the combination of opposition pressure and internal revolt prove irresistible, PM Singh would have no choice but to step down.

#### Kalam Could Go

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**17.** (C) Shastri claimed that President Kalam takes his personal reputation very seriously and has already told the Congress leadership that he will resign if named. Shastri predicted that the Left Front (LF) and Congress would bury their differences and pull together to get through the crisis and ward off a determined BJP assault, but that the LF would urge the UPA to get rid of liberal economist and America-lover PM Singh, who they see as their principal enemy, and replace Kalam and Vice President Shekawat with a new President sympathetic to their views as quickly as possible.

#### Congress Counter Attack Strategy

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**18.** (C) In a November 17 Conversation with Poloff, Congress MP and Sonia Gandhi confidant Rashid Alvi hinted that his party was taking the issue seriously and preparing a counterattack strategy. Congress is prepared to question the motives of the SC, he maintained, and ask why it delayed judgment until after the Bihar election was already underway and then refused to stop it and order the swearing in of the Assembly candidates elected in February, 2005. He pointed out that 40 legislators in Uttar Pradesh mysteriously changed from the BSP to the Samajwadi Party and kept Mulayam Singh Yadav in power there, but the judiciary has yet to rule on the case, which has been in the courts for over six months. He questioned why the SC was so bent on pursuing the Bihar case, implying that Chief Justice YK Sabharwal has a personal onus against the UPA and Congress. Alvi further hinted that Congress will also question the SC's right to dictate political matters when under India's political system, Parliament is responsible for determining the make-up of the government and the Supreme Court cannot make legislation or amend the Constitution.

#### and Contingency Plans

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**19.** (C) Alvi asserted that Congress has no strong feelings for President Kalam and would not lament his departure, but is not prepared to sacrifice PM Manmohan Singh. He suggested that the party would stage an elaborate "political drama," to keep Singh in office in which the PM would submit his resignation, there would be a "popular outcry" from all levels of Congress and Party President Sonia Gandhi would announce that because of the unprecedented popular pressure, she could not accept the resignation. Alvi confirmed that both President Kalam and PM Singh have discussed the case with the Congress leadership and the possibility of resignation and expressed a willingness to do so to preserve their personal reputations. Alvi denied that Congress had any list of successors to Manmohan Singh, and claimed that the party leadership has given no thought to replacing the PM.

110. (C) Congress is doing poorly in the Hindi heartland, where its party organization remains moribund and ineffective despite heavy investments in rebuilding efforts. This has led to growing fears that the BJP could use this important region to stage a comeback. The Congress leadership acted rashly and in a manner reminiscent of its old thuggish tactics when it failed to win elections in Jharkhand and Bihar and tried to use the governors to come to power there through the back door and keep the BJP/NDA out of power. While Congress will almost certainly sack Governor Buta Singh at the earliest opportunity and try to make him the scapegoat, it is also prepared to part with President Kalam if the pressure does not subside. Congress is likely to draw the line at PM Singh, however, and hold on to him at almost any cost. The resulting infighting between Congress and an apparently resurgent NDA opposition could be too much for the UPA to handle. With Congress under attack, the Left could demand that it step back from economic liberalization and pro-American foreign policies as the price for its support. The Prime Minister would surely oppose such a deal, just as he was rumored at the time to have opposed the Presidential intervention in Bihar on Lalu's behalf. But these are trying times for the UPA, and in Indian politics anything is possible.

BLAKE